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Current Topics.

Open City.

ONE of the first reactions of students of international law to the unilateral statement of 14th August by the Italian Government that they intended to declare Rome an open city was to point out that at present international law knows no such term as "open city." The authorities at Rome, judging from announcements from their wireless station, base their intentions on art. 25 of the Hague Convention of 1907, which repeats art. 25 of the previous Convention of 1899. This provides that "the attack or bombardment by any means whatsoever of towns . . . which are not defended, is prohibited." "It seems beyond doubt," Rome radio stated, "that open cities can still retain inside their walls military forces in normal garrison strength together with their arms and munitions in order to maintain public order if they are called upon to do so. But it would seem certain that the higher military commands—that is to say, the nerve centres of the war, can under no circumstances remain in an open city . . . In order that the declaration may become valid the measures laid down by international law must be satisfied. The enemy ascertains this through the medium of a duly accredited representative. The bilateral 'open city' declaration is then issued. From then on all bombing attacks from the air are prohibited." It is not easy to see how all possibility of aiding a country's war effort can be withdrawn from a modern city. Mere diversion of military traffic would not be sufficient to divest a city of its character as a legitimate target of aerial bombardment. There is the question of war industries, and few industries are not war industries nowadays. Even the telephone system might have to be cut in order to prevent its use for military purposes. Again, government and administrative organisations are hardly divisible as far as their war-time and peace-time functions are concerned, and should also be removed from an open city, if it is to be divested of its military character. The published view of the German High Command is that even the existence of railways or bridges makes a town "defended" within art. 25. They admit that this interpretation makes art. 25 superfluous, since "modern military history knows of hardly any case of an undefended town." A guide to what the law may be as to aerial bombardment is to be found in the Hague Warfare Rules of 1923, never ratified, but never yet impugned in theory. Article 24 provides that aerial bombardment is legitimate only when directed exclusively at the following objectives: military forces; military works; military establishments or depots; factories constituting important and well-known centres engaged in the manufacture of arms, ammunition, or distinctively military supplies; lines of communications or transportation used for military purposes. The rules also state that "where the military objectives are so situated that they cannot be bombarded without the indiscriminate bombardment of the civilian population, the aircraft must abstain from bombardment." Whether for reasons of technical dispersal of war production or of the growth of defensive anti-aircraft science, the rule against bombardment where it is impossible to avoid civilian damage could not possibly be accepted to-day, but the distinction between military and civilian objectives nevertheless remains valid. In the present war the declarations that have been made of Manila, Belgrade, Zagreb and Ljubliana, were ignored by the enemy; in the case of Paris, the declaration was made with the enemy at the gates, and the day before their entry. There are therefore no real precedents, but there is every reason in favour of the creation of precedents in international law. The full recognition of an enemy city as an open city, with suitable guarantees, can only weaken the enemy, and must in any case operate to benefit civilisation, not merely by preserving treasure houses of beauty, but by strengthening international law.

Rent of Furnished Houses Control (Scotland) Bill.

A USEFUL precedent which will no doubt be studied by the Departmental Committee on Rent Restrictions is contained in the Rent of Furnished Houses Control (Scotland) Bill, which was recently presented in the House of Commons by the Secretary of State for Scotland. In this country, as is well known, it is and has been an offence since 1920 to charge an "extortionate" rent for furnished premises, but the difficulties in enforcing that rule have been (1) the reluctance of magistrates to find that a high rent is extortionate; and (2) the fact that a tenant who complains is liable to eviction. The Scottish Bill provides for the control in Scotland of rents of furnished houses or houses let with attendance, though not of tenancies with board where the value of the board to the tenant forms a substantial part of the whole rent. The Secretary of State, it is proposed, is to appoint local tribunals of three to fix the rents of furnished premises in cases referred to them. Either party to a tenancy may apply to the tribunal to fix the rent for furnished premises, and the tribunal will also have jurisdiction to try cases referred to it by the local authority. Each tribunal will keep a register of cases referred to it, showing particulars of the accommodation and of the rent which they have fixed. The register is to be open to public inspection, and it will be an offence to charge more than the registered rent or to require a premium for granting or renewing a registered tenancy. The chairman of the tribunal is to be a solicitor or advocate of not less than five years' standing, and during the absence or incapacity of any member of a tribunal the Secretary of State is to appoint a substitute with like qualifications. It will be remembered that Scotland was six years ahead of this country in passing legislation dealing with the hire-purchase trade, and it is to be hoped that this country will not lag too far behind Scotland on this occasion. The Bill represents a big step forward towards the control of furnished premises. The existence of the tribunals alone will tend to keep the rents of furnished premises within reasonable bounds, as landlords will not be anxious to run the risk of having their premises registered and of thereby freezing the rents of their premises at a fixed figure.

Army Exercises and Damage Claims.

THE promptness of the War Office Claims Commission in dealing with the many claims that inevitably arise out of Service manœuvres is one of the features of a report of the Select Committee on National Expenditure published on 17th August by H.M. Stationery Office (price 2d.). An estimate of the total cost in claims paid and repairs effected by the beginning of June of the damage done is given at about £115,000. The Commission settled 89 per cent. of the claims made within seven weeks of the end of the exercises. The Commission began its work on 1st November, 1940, and down to 30th June, 1943, the total number of cases dealt with was 419,707, and a total of £2,918,431 was paid in respect of claims settled. Only £712,297 of this was in respect of damage done during training and manœuvres. The remainder of the payments was 75·6 of the total and was for claims arising out of traffic accidents and miscellaneous claims for damage to property or persons. The report states that in nearly all of these cases there is an element of negligence with lack of discipline on the part of troops. The majority of the claims arise out of traffic accidents. A total of more than 324,000 of such claims have been received since 1st November, 1940, and from 6,300 to 6,400 continue to come in every month. The Commission adds with reference to the small number of cases which are referred to the referee that there is some evidence to indicate that this procedure should be reviewed so that the legal position of the civilian who suffers injury or loss as a result of the driving of Service vehicles is as favourable as at common law. In connection with requisitioned premises, the Commission'

officers, in conjunction with quartering commandants, make sudden visits of inspection, and up to 31st May, 43,288 such inspections had been made. The result was that there has been a steady diminution in the percentage of unsatisfactory occupations, which have fallen from 7 per cent. to 2 per cent. Reference is made in the report to unnecessary damage—cases, for example, where armoured units have breached walls and fences far from the scene of any exercises. Another interesting example of damage due to ignorance of rural life occurred when twenty heifers were poisoned by eating yew which had been cut up for camouflage purposes. The Commission are not convinced that all units are seized of the desirability of avoiding damage caused by negligent or wanton behaviour and recommend that the authorities of all three services should impress on all ranks the necessity of maintaining a high degree of discipline and should impart knowledge of the kind of damage that may be caused on manœuvres through ignorance of rural conditions. The approximate annual cost of the work of the Commission is £275,000, a figure which the Commission does not consider too large, having regard to the nature and volume of its work.

Local Authorities and the Future.

A JOINT memorandum recently issued by the Association of Municipal Corporations and the County Councils Association expresses concern at the changes made and threatened by the Government in the local government services. While anxious to see and assist in improved services, both associations are convinced that the Government is approaching the problem on entirely wrong lines. They hold the strong opinion that the present proposal to redistribute services before there has been an impartial inquiry to ascertain the best local government units for the purpose is wholly misguided and represents an attempt to begin improvements at the wrong end. The associations also express the opinion that the likelihood either of different areas being prescribed for each major service, or of some of these services being made to fit into areas selected solely for the needs of another, can only result in confusion, waste and inefficiency, and reference is made in this connection to the National Health service scheme put forward by the Ministry of Health and the educational proposals put forward by the Board of Education. The memorandum also expresses the associations' deep concern for the maintenance of local government on democratic lines and deplores the increasing centralisation exemplified in the transfer of the veterinary and fire services to Whitehall, the proposed transfer of functions relating to milk production to the central government and the recent soundings as to the question of class I roads following in the wake of the trunk roads. What is now being witnessed, states the memorandum, is a series of piecemeal attacks upon a system which is the admiration and envy of other countries. There will be strong support for the views put forward in the memorandum. The recent "regionalisation" controversy led many authorities to conclude that the democratic control of local government services through the local authorities must be preserved even at the cost of dispensing with what might seem to be an improvement in the direction of efficiency. The same consideration seems to apply with equal force to the new piecemeal attack on local controls.

Mental Abnormality and Crime.

THE interest recently shown by the Home Secretary in the reclamation of criminals by psychological treatment is a reflection of a general change in the attitude of the public towards the problems of crime and punishment. The August issue of *The Juridical Review* contains an illuminating article on mental abnormality and crime, by Dr. L. RADZINOWICZ and Mr. J. W. C. TURNER, constituting the substance of an introduction to a forthcoming book with the same title. The volume is to be a work of collaboration of fourteen well-known medical authorities with the Department of Criminal Science in the Faculty of Law, University of Cambridge, under whose auspices it will be published by Messrs. MACMILLAN. One of the most remarkable facts which emerges from research is that "mental abnormality approached from a wide point of view is a mass phenomenon, affecting deeply the life of the whole community." To illustrate this, the authors state, it is sufficient to refer to the authoritative works of Professor CYRIL BURT and to the findings of the Mental Deficiency Committee of 1929. The chief issues raised by the association of mental abnormality and criminal activity are stated to be (1) the clarification of the legal concept of *mens rea*; (2) a classification of the different types of mental variation, with a definition of each, adapted for legal needs; (3) the selection of new kinds of sanctions for the appropriate treatment of each of these groups of delinquents; (4) the construction of administrative machinery for supplying courts of law with such information concerning the personality of the offender as they will need when abnormality is suspected; (5) the appropriate adjustment of the prison system and the after-care system; (6) the provision of a treatment alternative to imprisonment for certain mentally affected delinquents; and (7) the promotion of further research into the relation between poverty, mental variation and crime, to assist the Legislature to formulate suitable measures of social prophylaxy. The authors pertinently ask whether the Mental Deficiency Acts should not be revised so as to widen the concept of "mental deficiency," and whether the tribunals make full enough use of the various provisions of those Acts which enable them in certain cases, instead of inflicting punishment, to place the offender under guardianship, or to send him to an institution for mental defectives. The crucial question, it is suggested, is whether our criminal legislation should recognise the concept of "partial" or "diminished" responsibility, particularly with regard to psychopathic and psycho-neurotic conditions, of which there are a great variety. That doctrine is known to Scots law, and was described by LORD ALNESS in *R. v. Savage* (1923), as "a state of mind which is bordering on, though not amounting to, insanity . . . a mind so affected that the responsibility—in other words the prisoner in question—must be only partially accountable for his actions. The effect is that the offence committed is placed in a lower category, for instance, manslaughter instead of murder, and the punishment is accordingly reduced. The proved close association between extreme poverty and mental sub-normality requires some better remedy than a mechanical accumulation of short sentences. The authors recommend that a regular service carrying out thorough investigations into the personality and social circumstances of the young law-breaker should be attached to all juvenile courts, and that such a system should become a permanent element in the procedure of this branch of our criminal administration. It is added that among offenders put on probation there are many who should undergo mental treatment of one kind or another, and if such a clause could be included in the probation order (and this has been provided in the Criminal Justice Bill of 1938, which is to be passed after the war) will increase the efficiency of the probation system.

Termination of Employment: New Order.

THE latest contribution of the Ministry of Labour and National Service towards the saving of man power is embodied in the Control of Employment (Notice of Termination of Employment) Order, 1943 (S.R. & O., No. 1173), dated 10th August, and made under reg. 58A of the Defence (General) Regulations, 1939. The order came into force on 20th August and applies to all persons who on or immediately before the day on which their employment terminated, or was due to terminate, were employed by an employer (whether with or without remuneration) except persons falling within certain specified classes, of which the order specifies twenty-three in all. Among the excepted classes are persons of either sex under the age of eighteen years, male persons over the age of sixty-five years and female persons over the age of sixty years; persons employed in any employment which, at the time of engagement, is not intended by the employer to last for longer than one week and which in fact does not last longer than one week; and persons employed in any employment who are normally employed in that employment for less than twenty hours a week and whose said employment is terminated for any reason. It also does not apply to certain dental, pharmaceutical, nursing, medical and agricultural workers, certain civil defence workers, men of the Merchant Navy and persons engaged on scheduled undertakings or on a scheduled site who leave or are discharged from their employment with the permission of a national service officer. Further, it does not apply to persons employed in any undertaking who are so employed in consequence of a direction of a national service officer and who leave or are discharged from their employment after the direction has been withdrawn. Finally, the Minister may issue an exemption certificate to an employer exempting him from the provisions of the order as regards the persons described in the certificate and subject to the conditions in the certificate. The order provides that an employer must notify the local employment exchange where notice to terminate a worker's employment is given or received, or where his employment is terminated without notice. The notice to the exchange must be given immediately on the giving or receipt of a notice to terminate the employment or, where notice to terminate the employment has been given or received, immediately on the termination of the employment. It must state the name, unemployment book number (if any) and the occupation of the worker concerned and certain other particulars, including the circumstances in which the employment terminated or is due to terminate. Where an employer has given notice to a local exchange of the termination or the prospective termination of any employment and the worker does not leave his employment on the day on which the employment terminated, or was due to terminate, the employer must, not later than the day of the employment terminated, or was due to terminate, give a further notice to the local office stating that the worker concerned did not leave his employment as anticipated and must give any further information which is required. The object of the order is to prevent the loss in man power which results when workers leave their jobs and do not register immediately at the labour exchange or take other work at once. The Minister stated on 16th August that the new order does not prevent workers from finding new work for themselves if they are already free to do so, but if, on inquiry, it is found that they have taken work of less importance to the war effort than other available work, they might be required to transfer.

A Conveyancer's Diary.

Statute-barred Debts owing by Legatees.

SOME eighteen months ago (86 SOL. J. 81) I dealt with the cases (especially *Re Rownson*, 29 Ch. D. 358, and *Midgley* v. *Midgley* [1893] 3 Ch. 282) concerned with the payment of statute-barred debts by a personal representative. I deal this week with the position where the statute-barred debt is owed, not *by*, but *to*, the testator or intestate. The effect of the statute is, of course, not to extinguish the debt but to take away the remedy for it by action. The debt remains owing and the creditor or his personal representative can recover it by any means, other than action, which may be lawfully available. For example, the effluxion of the statutory period does not affect a lien (see *Re Brockman* [1909] 2 Ch. 170, a case on taxation of solicitor's costs, which is of some general interest).

Certain rules have been evolved for dealing with cases where the debtor has the benefit of the Statute of Limitations and at the same time is to receive something out of the estate of the deceased creditor. It seems only fair that the debtor should pay his debt before taking the deceased's bounty. And that is the general rule: as Kekewich, J., said in *Re Akerman* [1891] 3 Ch. 212, at p. 219, "a person who owes the estate money, that is to say, who is bound to increase the general mass of the estate by a contribution of his own, cannot claim an aliquot share given to him out of that mass without making the contribution which completes it." In *Re Akerman* a testator gave a mixed fund of residue to his trustees for division into seven parts, three of which were to go absolutely to three of his sons who were also given specific devises and bequests. The three sons each owed money to the testator and they had given I O U's to him. The debts were, however, statute-barred. For the reason set out above, Kekewich, J., held that they could not take their respective shares of residue until they had made good that which they respectively owed to residue. He drew a distinction, however, between residue and assets specifically given: the debt owing to an estate is part of residue, but residue is only ascertained after the subtraction of specific gifts from the original estate. Thus a specific legatee is not claiming against the same fund as that to which, as a debtor, he would owe his debt. The rule therefore does not apply (see also *Re Savage* [1918] 2 Ch. 146). Likewise it appears that the rule would have no application to a case in which a partnership was indebted to the testator but a legacy was given by him to one of the partners (*Turner* v. *Turner* [1911] 1 Ch. 716). On the other hand, the rule applies to next-of-kin as well as to legatees. Thus, in *Re Cordwell*, 20 Eq. 644, one Sarah Cordwell died intestate, William Thomas Cordwell being one of her next-of-kin. He was indebted to the estate for £500 and interest, part of which debt and interest was, according to the chief clerk's certificate, barred by the Statute of Limitations. Bacon, V.-C., held that "until the debtor discharges his duty to the estate by paying the debt which he owes to it, he can have no right or title to any part of it under the statute" (i.e., the Statute of Distribution).

The exact way in which this rule is expressed deserves attention; it is that a person who is indebted to the personal representative cannot take any share out of the fund into which his debt, if paid, would fall, until he has paid it. In practice, no doubt, there will be a set-off by agreement; but the right is not one of set-off, and that expression, which is sometimes used of it in the cases, would be better avoided. Again, the rule is purely negative; the debtor cannot take anything unless he pays. If he is protected by the Statute of Limitations, there is nothing to compel him to pay, and there may well be cases where it is more profitable to the debtor to refrain from paying his debt and to forfeit his legacy rather than obtain the legacy at the cost of paying the debt. The right of choice is that of the legatee, and no one can compel him to exercise it in any particular way.

"Contents" of a House.

I have seen two or three cases lately in which executors have had difficulty in interpreting a gift of the "contents" of a given house. It quite often happens at present that objects normally kept in a house have been removed elsewhere for safety, and, by this date, may have been absent for four years. There are, of course, a number of cases on the connotation of "contents"; with those I am not here concerned. But, on the assumption that any given object would fall within the word "contents" but for the fact of its temporary removal for safety elsewhere, such removal will not affect matters. That appears to be quite clear from the remarks of Chitty, J., in *Re Johnston*. 26 Ch. D. 538 at p. 553, where a box of jewellery at a bank was held to be part of the contents of a house. A further authority to the same effect is *Re Lea*, 104 L.T. 253. I should expect to find that those two decisions were held to govern a case of temporary removal to a safer locality.

Mr. Patrick Joseph Brady, of Booterstown, Co. Dublin, solicitor, former M.P. for Stephen's Green Division, Dublin, left personal estate in England and Eire valued at £25,434.

Landlord and Tenant Notebook.

Rent Act Status of "Built-in" Furniture.

RECENT suggestions of making English a, or the, "universal language" have been warmly supported by some of the distinguished foreign refugees now in our midst; some of whom have, however, politely and tactfully pointed out that revision of our spelling would facilitate the process. But after reading the report of *Gray* v. *Fidler* (1943), 2 All E.R. 289 (C.A.), one cannot but be struck by the thought that if the suggestion and revision are ever carried out, some measure of disillusionment may attend the result; for it is clear that when we have spelt such a word as "furniture," and however we may spell it, there is still ample room for disagreement on what it means.

The question to be decided was whether a certain flat, fitted with a number of wardrobes, beds, cupboards, tables, etc., screwed to the walls, was, by virtue of this "built-in furniture," let "at a rent which included payments in respect of the use of furniture" (Rent, etc., Restrictions Act, 1939, s. 3 (2) (*b*)). The original hearing, before Judge Earengey, K.C., at Clerkenwell County Court, who answered the question affirmatively, was reported at length in the *Estates Gazette* of 2nd January last, and the judgment was discussed and commented upon in this "Notebook" on 30th January (87 SOL. J. 37). The decision has been upheld, but by a majority, and, as is often the case, the dissenting judgment is provocative of thought. Hence, though leave to appeal to the House of Lords has been given, the point is worthy of further discussion now.

A general observation which may give some clue to the divergence of opinion is this: while the dissenting judgment, delivered by Lord Greene, M.R., cites a large number of authorities, comparatively few are mentioned in those of MacKinnon and du Parcq, L.JJ., both of whom drew rather on experience. The former in particular made reference to such matters as the furnishing expenses which ordinarily face the newly married, to the very uncomfortable wooden seats and very inconvenient desks used by barristers in the court and to the chairs occupied by himself and his brethren, to the round bath and its accompanying can of the learned lord justice's undergraduate days, to the electric fire "which can stand anywhere, with a wire to a wall plug," etc. (and, if wireless sets were not instanced, those who read a full report of the appeal of *Lyon* v. *Daily Telegraph, Ltd.*, heard a few days before *Gray* v. *Fidler*, will understand why).

The dissenting judgment accepts the finding that the "built-in" furniture discharged the same functions as corresponding articles of loose furniture, but not the reasoning that because it would be removable by the tenant it was "furniture" for the purposes of the paragraph. That paragraph, in the view of the learned Master of the Rolls, assumed the existence of two kinds of subject-matter; a dwelling-house, and matters distinct from the dwelling-house: board, attendance, furniture. There must therefore be a demise *and* a contract distinct from the demise; in this case (for the paragraph to apply) a contract of hiring furniture. Both the language of the particular agreement and the true interpretation of the word "furniture" negatived such a conclusion.

The tenancy agreement between the parties had, the learned Master of the Rolls said, certain features which made it deserving of more attention than it had received. What (if I may use formal conveyancing language, for the sake of brevity) would be the parcels, habendum and reddendum referred to the "flat," let at £78 a year, and to the hire and maintenance of an electric hot water heater, cooker, stoves, meter rent, flat rate, fixed charge, etc. But there was no mention of "furniture" as such in this part of the agreement. That word first made its appearance in a repairing covenant, covering "the interior of the flat and all the *furniture*, fittings *and fixtures* therein (a list of which is set out in the second schedule hereto)." A covenant against alterations mentioned "doors, or cupboards or other *fixtures*." Another covenant gave the landlord access to view the flat and take inventories of the *fixtures*. The covenant to deliver up concluded with "together with all *fixtures* fixed or belonging to the flat." The second schedule itself was headed "Landlord's Fixtures and Fittings," and it was in this schedule that the various articles of "built-in furniture" were enumerated. The construction of the document, the learned Master of the Rolls held, was consequently such that the parties regarded those articles as fittings and not as furniture. There was nothing, his lordship held, to prevent parties from agreeing that the purposes of a lease a loose article which would normally fall under the word "furniture" should be regarded as a "fixture." On the language of the agreement, then, the "built-in furniture" was not furniture.

But without regard to that language, Lord Greene considered that the result should be the same. The proper test was not whether, if the articles had been affixed by the tenant, he might have removed them; it was whether they *passed by the demise* itself, or whether their use (this is the word employed by the statute) is enjoyed by the *contract for hiring*. This test, the learned Master of the Rolls, emphasises, has the merit of simplicity, and his lordship pointed out that the other interpretation would

have excluded many shops (with fitted cupboards, etc.) from the Acts before the Acts themselves excluded business premises; while there was little fear of landlords equipping houses with tables, etc., deliberately screwed to the floors, for it was not they who would benefit. The fact that a bedstead might be either furniture (if loose) or a fixture (if "built-in") was irrelevant.

I think most of us would find the first part of this judgment more easy to criticise than the second; the answer which suggests itself was stated by du Parcq, J., in this way: "I do not think that the law permits a landlord and tenant to alter their statutory rights and liabilities by agreeing between themselves either that what is not, in fact, furniture shall be deemed to be furniture for the purposes of the Act, or that what is furniture shall be deemed, etc." The very nature of the Rent Acts is opposed to that of legislation restrictive of freedom of contract. I do not suggest that agreement can never play a part in status qustions; in *Williams* v. *Perry* [1924] 1 K.B. 936, a tenant who took premises stating that he wanted them for business purposes and did not want to use any part of them as a dwelling-house was held to be unprotected when he changed his mind. But the point there was whether the premises were "let *as* a dwelling" (1920 Act, s. 12 (2)), which clearly suggests the possibility of argument about what was agreed, whereas the question in *Gray* v. *Fidler* was whether the premises were let "at a rent which included payments in respect of furniture."

One must agree that the test suggested in the other part of Lord Greene's judgment has the merit of simplicity; but MacKinnon, L.J., expressed the objection to this method by "protesting against the suggestion that, in order to construe a simple English word in an Act of Parliament one should have recourse to its use in a hypothetical will of which another part, in the light of a highly technical rule of real property, throws doubt on the meaning of that English word." I think this protest indicates the nature of the difference between the conflicting views. Both MacKinnon and du Parcq, L.JJ., considered that the point should be decided without reference to authority, except in so far as authority sanctioned the giving of the "ordinary or popular meaning," and both were satisfied that if that were done fixtures might be furniture. Both deprecated the importance attached by the county court judge to the dictionary definition (which Lord Greene, M.R., rather approved), and perhaps I may recall here that in the "Notebook" aforementioned I ventured to point to possible objections to adopting that definition.

Books Received.

Addenda to Elphinstone's Guide to War Damage Acts, 1941-42. 1943. pp. 16. London: The Solicitors' Law Stationery Society, Ltd. 2s. net.

War Damage Guide. By JOHN BURKE, Barrister-at-Law. 1943. Demy 8vo. pp. x and (with Index) 148. London: Sweet and Maxwell, Ltd. 10s. 6d. net.

Annual Survey of English Law, 1940. The joint work of the Members of the Departments of Law and International Studies at the London School of Economics and Political Science. 1943. Medium 8vo. pp. xxvii and (with Index) 295. London: Sweet & Maxwell, Ltd. 15s. net.

Obituary.

SIR ADRIAN POLLOCK.

Sir Adrian Pollock, K.C.M.G., City Chamberlain and Treasurer since 1912, died on Saturday, 21st August, aged seventy-five. He was a grandson of Lord Chief Baron Pollock, nephew of Baron Pollock, and first cousin of Sir Frederick Pollock, Lord Hanworth, M.R. He was educated at Wellington and, without going to any university, admitted in 1890. In 1903 he was appointed City Remembrancer and in 1912 he became City Chamberlain and Treasurer. He received the K.C.M.G. in 1938.

SIR HENRY WYNNE.

The Rt. Hon. Sir Henry Arthur Wynne, Chief Crown Solicitor for Ireland from 1916 to 1922, died on Saturday, 21st August, aged seventy-six. He received the honour of knighthood in 1919, and was sworn a Member of the Privy Council for Ireland in 1922.

MR. L. MORGAN MAY.

Mr. Leonard Morgan May, F.S.A., barrister-at-law, died on Sunday, 15th August. He was called by Lincoln's Inn in 1909 and at one time contributed notes of cases to THE SOLICITORS' JOURNAL.

MR. M. S. ISAACSON.

Mr. Martin Sylvester Isaacson, solicitor, of Messrs. Farrer and Co., solicitors, 66, Lincoln's Inn Fields, W.C.2, died on Friday, 20th August. He was admitted in 1892.

To-day and Yesterday.

LEGAL CALENDAR.

August 23.—On the 23rd August, 1766, Benjamin Stafford was convicted at the Surrey Assizes of publishing a forged bill of exchange. He was condemned to death but "on his pretending to make great discoveries of frauds in one of the public offices, had his sentence respited; unable, however, to make good his pretences," he was duly hanged at Guildford.

August 24.—After Cornelius Saunders was hanged at Tyburn on the 24th August, 1763, for stealing £50 from the house of Mrs. White, in Lamb Street, Spitalfields, the mob carried off his body and laid it at her door. They then broke in, seized all her salmon tubs and most of her furniture, making a great pile in the street and setting fire to it. The riot attained such proportions that eventually the military were fetched, but the crowd pelted the soldiers with stones and prevented them from putting out the flames, refusing to disperse till all was consumed.

August 25.—The Surrey Assizes, at Guildford, ended on the 25th August, 1764, when, amongst others, there was condemned to death John Skinner, a waterman, for robbing the house of Captain Dobson, at Rotherhithe. He had been employed by the captain, from whom he had received much kindness, and learning that he was going to stay in the country, he took the opportunity to strip the house of linen, clothes, plate and everything that he could conveniently carry off. Fortunately he was a fool, for he was discovered through wearing one of the captain's fine shirts, while his wife was seen with laced ruffles and handkerchiefs.

August 26.—On the 26th August, 1732, at the Gloucester Assizes, Ely Hatton was indicted for the murder of Thomas Turberville, a carpenter, of Mitchel Dean, who had been found dead in his workshop with his skull chopped to pieces and a broad axe lying beside him covered with blood. The evidence was purely circumstantial. In particular, witnesses swore that the shirt and stockings he was wearing when arrested belonged to the deceased and that there was blood on his coat. At the inquest he said the shirt was his father's, though when arrested, he had said it was his brother's. His story was that he had gone out that evening with Turberville to see some deer and had not returned with him. He was convicted, executed and hung in chains, but declared he was innocent, as he hoped for salvation.

August 27.—On the 27th August, 1827, Thomas Norton was hanged at the Old Bailey for a highway robbery. He had been a dissolute, depraved and ferocious character and he showed no change at the end. When he returned to his cell after the last service in the chapel he "expressed his joy in very coarse terms that he had now done with preaching." He slept restlessly, woke at five, rose and complained of the time passing slowly. He would not attend prayers with the other condemned men, but walked briskly up and down the yard in sullen silence, declining also to take any breakfast. He showed no weakness, but died "game."

August 28.—On the 28th August, 1788, John Brodie, a member of the Edinburgh town council and the foremost cabinet maker of his time, was condemned to death for an attempt to rob the Excise Office, the culmination of a double life he had long been leading, plundering the houses of his fellow citizens by night and spending the proceeds on gambling and the upkeep of two mistresses. He was tried and sentenced with one of his accomplices, the hearing having begun at nine o'clock on the previous morning. The closing stages of the proceedings were enlivened by an unprecedented scene when young John Clerk, afterwards Lord Eldin, in his speech for the accomplice wantonly worked up a quarrel with the judges and drew down on himself repeated rebukes from the Lord Justice Clerk, Lord Braxfield. Finally, he sat down in protest, but when the court was about to pass to the next stage of the hearing he sprang to his feet and shaking his fist at the Bench exclaimed: "Hang my client if ye daur, my lord, without hearing me in his defence!" After consultation the judges decided to let him continue and in after years he declared that his having stuck up so well then was the making of him at the Bar. Brodie, whose model had been Gay's Macheath, appeared in court dressed in a new blue coat, fancy waistcoat, black satin breeches and white silk stockings and wore his hair fully dressed and powdered. Even when sentence of death was pronounced, he played up to the occasion with coolness and dignity.

August 29.—On the 29th August, 1812, Benjamin Renshaw was hanged at Nottingham for setting fire to a haystack. About eleven o'clock he rode in a cart to the place of execution with a charitable gentleman who had visited him daily since his condemnation. For about fifteen minutes he addressed the large crowd assembled, warning them to avoid evil company, expressing with great fortitude his confidence in the mercy of God. When he was first turned off the rope slipped and it had to be readjusted. The spectators were angry with the executioner for his carelessness.

After being at the Windsor County Court since 1941, His Hon. Judge Donald Hurst has been transferred to the courts of Cheltenham, Tewkesbury and North Leach. His Hon. Judge Engelbach, of Shoreditch and Chesham courts, will succeed him at Windsor.

Rules and Orders.

(*Continued from p.* 302.)

26. *Reference for inquiry and report.*]—(1) Where an application for leave to proceed is pending before any court (in this Rule called the home court) and the defendant resides or carries on business in the district of another court (in this Rule called the foreign court), the home court may, of its own motion, order the application to be referred to the registrar of the foreign court for inquiry and report.

(2) Where such an order is made, the registrar of the home court shall send the order with the documents in the action or matter to the registrar of the foreign court.

(3) On receipt of the order and documents the registrar of the foreign court shall give the defendant notice of a time and place at which the inquiry will be held, and, after the date fixed for the inquiry, shall make a report in writing and send it with the documents to the registrar of the home court.

27. *Check on issue of execution.*]—(1) No warrant of execution or possession or delivery and no judgment summons shall be issued to enforce any judgment unless the party desiring to enforce the judgment files in the court office a praecipe showing either that leave to proceed has been given or that the judgment is one to which neither section 1 nor section 2 of the Act applies.

(2) No order of commitment shall be made on the hearing of a judgment summons unless the judge is satisfied either that leave to proceed has been given, or that the judgment is one to which neither section 1 nor section 2 of the Act applies.

28. *Garnishee proceedings.*]—(1) A judgment creditor who desires to take garnishee proceedings to enforce a judgment shall file in the court office, together with the documents required by Order XXVII, Rule 4, a praecipe stating that section 1 or section 2 applies to the judgment and that leave to proceed has not been given, or, as the case may be, that leave to proceed has been given, or that neither section 1 nor section 2 applies to the judgment.

(2) If section 1 or section 2 applies to the judgment and leave to proceed has not been given, the judgment creditor may apply for leave to proceed at the hearing of the garnishee proceedings.

(3) Unless a praecipe is filed stating that leave to proceed has been given or that neither section 1 nor section 2 applies to the judgment, the registrar shall serve a notice in Form 12 on the judgment debtor not less than 6 clear days before the return day.

(4) It shall not be necessary for leave to proceed to be given before the issue of the garnishee summons, but judgment shall not be given in favour of the judgment creditor in garnishee proceedings unless the court is satisfied either that a notice in Form 12 has been served as aforesaid or that leave to proceed has been given or that neither section 1 nor section 2 applies to the judgment.

(5) In every case where a garnishee summons is issued the registrar shall annex a notice in Form 12 to the garnishee summons for service on the garnishee, and the provisions of Rule 23 (3) shall apply to the garnishee summons and to any judgment obtained by the judgment creditor against the garnishee as they apply to an ordinary summons and to any judgment obtained by the plaintiff against the defendant with the necessary modifications.

29. *Equitable execution.*]—(1) A judgment creditor who desires to apply for the appointment of a receiver by way of equitable execution of a judgment shall file in the court office with the notice of application a praecipe stating either that section 1 or section 2 applies to the judgment and that leave to proceed has not been given, or, as the case may be, that leave to proceed has been given, or that neither section 1 nor section 2 applies to the judgment.

(2) If section 1 or section 2 applies to the judgment and leave to proceed has not been given, the judgment creditor may apply for leave to proceed at the hearing of the application for the appointment of such receiver.

(3) Unless a praecipe is filed in the court office stating that leave to proceed has been given or that neither section 1 nor section 2 applies to the judgment, the judgment creditor shall serve on the judgment debtor and file in the court office, together with the notice of application for the appointment of such receiver, a notice in Form 13.

(4) No order shall be made for the appointment of such receiver unless the court is satisfied either that a notice in Form 13 has been served as aforesaid or that leave to proceed has been given or that neither section 1 nor section 2 applies to the judgment.

30. *Form and service of order.*]—An order made on an application for leave to proceed to the enforcement of a judgment shall be in Form 14, and may be incorporated in the judgment, and if not so incorporated, shall, except where unconditional leave is given, be served by the registrar in accordance with Order XXIV, Rule 8.

Leave to exercise Remedy or Foreclose or obtain Possession of Mortgaged Property.

31. *Leave in proceedings for foreclosure.*]—An application for leave to take a step in proceedings for foreclosure or sale in lieu of foreclosure instituted before the second day of September, 1939, shall be made on notice in Form 15 in accordance with Order XIII, Rule 1.

32. *Leave to distrain.*]—(1) An application for leave to distrain shall be by originating application and, subject to the provisions of this Rule, the provisions of the County Court Rules, 1936, relating to originating applications shall apply.

(2) The application shall be in Form 16 and the notice required by Order VI, Rule 4 (2) (*c*) (ii), to be served on the respondent with a copy of the application shall be in Form 17 in lieu of the form prescribed in that sub-paragraph.

(3) Order VIII shall apply to the service of the application and notice subject to the following modifications:—

(*a*) Service may be effected—

(i) by a bailiff of the court; or

(ii) by the applicant or some person in his permanent and exclusive employ or some person regularly employed by him to collect the rent of the premises to which the application relates; or

(iii) by the solicitor of the applicant or a solicitor acting as an agent for such solicitor or some person employed by either solicitor to serve the documents.

(*b*) Service of the documents shall be effected not less than 7 clear days before the day fixed for the hearing:

Provided that service may be effected any time before the day so fixed on the applicant satisfying the registrar by affidavit that the respondent is about to remove from the address stated in the application.

(*c*) Service shall be effected by delivering the documents to the respondent or to some person apparently not less than 16 years old at the premises to which the application relates.

Provided that where service is by a bailiff of the court, and the court is satisfied, by a report of a bailiff or otherwise, that if the application and notice are served by post, there is a reasonable probability that the documents will come to the knowledge of the defendant in sufficient time for him to have an opportunity of appearing at the hearing of the application, service may be effected by post.

(*d*) Where service is otherwise than by bailiff, the person effecting service shall make an indorsement to the effect of Form 31 in the County Court Rules, 1936, on the copy of the notice retained by him and shall state therein his qualification to serve the documents, and shall, within 3 days of the date of service or such further time as may be allowed by the registrar, file in the court office the indorsed copy of the notice and any unserved notice.

(*e*) Where service has been effected by delivering the documents to some person other than the respondent, the registrar may, if he thinks fit, dispense with the notice of doubtful service prescribed by Order VIII, Rule 30 (1), and if the respondent does not appear on the day fixed for the hearing, the application may proceed, if the court thinks fit, notwithstanding anything in Rule 30 (2) of that Order.

(*f*) Order VIII, Rule 6, (which relates to substituted service) shall only apply where for sufficient reason service cannot be effected in the manner prescribed by sub-paragraph (*c*) of this paragraph.

(4) The application may be heard and determined by the registrar, subject to appeal to the judge under Order XXXVII, Rule 5, and the day fixed for the hearing of the application need not be a court day, and the registrar may hear the application in court or in chambers, whether the judge is holding a court or not.

(5) Where leave to distrain for the rent of any premises is required both by the Act and by the Rent and Mortgage Interest Restrictions Act, 1920 to 1939,[8] the application shall be made in accordance with these Rules and not in accordance with the Rent and Mortgage Interest (Restriction) Rules, 1920, as amended.

(6) An order giving leave to distrain shall be in Form 18, and shall be served on the applicant and the respondent.

33. *Leave to exercise remedy or institute proceedings.*]—(1) Subject to Rules 31 and 32, an application for leave to exercise a remedy or to institute proceedings under subsection (2) of section 1 may be made by originating application and the provisions of the County Court Rules, 1936, relating to originating applications shall apply, subject to the modification that the application shall be in Form 16, and the notice required by Order VI, Rule 4 (2) (*c*) (ii), to be served on the respondent with a copy of the application shall be in Form 17.

(2) Where default has been made in the payment of mortgage money or the performance of a mortgage obligation, then, without prejudice to the generality of any other provisions relating to the joinder of causes of action, an application for leave to realise the security by selling the mortgage property may be joined with an application for leave to take possession, or to institute proceedings for recovery of possession of the property.

(3) Paragraph (1) of this Rule shall apply to an application for an order removing or modifying, in relation to a particular liability, the restrictions imposed by Regulation 4 (1) of the Defence (Evacuated Areas) Regulations, 1940, with the substitution of Forms 19 and 20 for Forms 16 and 17 respectively.

General Provisions as to Procedure in the County Court.

34. *Certain rules in Part III to apply.*]—The following Rules shall apply to proceedings in a county court as they apply to proceedings in the High Court with such modifications as may be necessary:—

(*a*) Rule 18 (which relates to the attendance of other creditors).

(*b*) Rule 19 (which relates to an *ex parte* application by a mortgagee for leave to appoint a receiver).

35. *Respondents to mortgagee's application.*]—(1) Subject to the provisions of paragraph (2) of this Rule, the persons to be made respondents to an application by a mortgagee of property for leave to exercise against the property any right or remedy shall be as prescribed in paragraph (1) of Rule 20.

(2) In any application in which a person who is not a respondent under the provisions of paragraph (1) of this Rule would be affected by the exercise of any such right or remedy as aforesaid, the applicant shall include in his application a statement giving the name of such person and showing what his interest is in the mortgaged property, and containing a request for a direction that such person be added as a respondent to the application.

(8) 10 & 11 Geo. 5. c. 17, 13 & 14 Geo. 5. c. 32, 14 & 15 Geo. 5. c. 18, 15 & 16 Geo. 5. c. 32, 23 & 24 Geo. 5. c. 32, 25 & 26 Geo. 5. c. 13, 1 & 2 Geo. 6. c. 25 .2 & 3 Geo. 6. c. 71

(3) If the mortgagee is uncertain as to what persons would be affected by the granting of the application, he may, in lieu of naming any respondent therein, file therewith a statement giving the names of all persons who he thinks may be affected and showing the interests of such persons and containing a request for a direction which if any of such persons are to be made respondents.

(4) On the filing of an application which is accompanied by a request under paragraph (2) or paragraph (3) of this Rule, the registrar shall, after entering the application in the books of the court but before fixing a day for the hearing of the application, fix a day for the consideration by the court of the question what persons (if any) are to be made respondents.

(5) On the consideration of the applicant's request, the court may direct that one or more of the persons named by the applicant or any other person who the court may think would be affected by the granting of the application be added as a respondent or respondents to the application.

(6) When such a direction has been given and the applicant has filed in the court office as many copies of the application as there are respondents, the registrar shall fix a day for the hearing of the application and give notice to the applicant of the day so fixed, and, subject as aforesaid, the provisions of Order VI, Rule 4 (2), shall apply.

36. *Power to admit letters as evidence.*]—For the purpose of hearing and determining an application or exercising its discretion under these Rules, the court may, if it thinks fit, look at any letter or other document sent or tendered to the court, and may admit the letter or document as *prima facie* evidence of any facts stated therein, and if in all the circumstances the court thinks it just to do so.

37. *Costs.*]—(1) No solicitor's charge shall be allowed as between party and party in connection with an application under Rule 23 (3) (*a*) or (*b*), 24 (1) (*a*) or 28.

(2) Where costs are awarded in an application under Rule 23 (3) (*c*) or (*d*), 24 (1) (*b*), 29, 31 or 32, the costs shall be fixed and allowed without taxation, and if in any such application the party to whom costs have been awarded has employed a solicitor, the following provisions shall apply :—

(*a*) Where the application is made under Rule 23, 24 or 29 in respect of a judgment for a sum of money, the amount to be fixed for the solicitor's charges shall be regulated by the sum due under the judgment (exclusive of costs) at the date of the service of the notice of the application, according to the following Table :—

Sum of Money.	Amount of Fixed Charges.
	s. d.
Exceeding £2 and not exceeding £5 ..	3 4
Exceeding £5 and not exceeding £10 ..	5 0
Exceeding £10 and not exceeding £20 ..	6 8
Exceeding £20 and not exceeding £50 ..	8 10 } including percentage
Exceeding £50	12 0 } increase.

(*b*) Where the application is for leave to distrain, the amount to be fixed for the solicitor's charges shall be regulated by the sum sought to be distrained for at the date of the filing of the application according to the said Table.

(*c*) Where the application is for leave to enforce a judgment in an action for the recovery of land or for the return of goods (under Rule 23 or 24) or for leave to take a step in an action of foreclosure or sale (under Rule 31), the amount to be fixed for the solicitor's charges shall be regulated by the Scale on which the costs of the action are awarded, according to the following Table :—

Scale of Costs of the Action.	Amount of Fixed Charges.
	s. d.
Lower Scale, Column 1	3 4
Lower Scale, Column 2	5 0
Scale A	6 8
Scale B	8 10 } including percentage
Scale C	12 0 } increase.

(*d*) The amount so fixed for solicitor's charges shall include all work done by the solicitor in connection with the preparation, service and hearing of the application.

(3) Where costs are awarded in an originating application under Rule 33, the costs shall be fixed and allowed without taxation, and the amount to be fixed for solicitor's charges shall be such amount as the registrar thinks reasonable.

38. *Meaning of references to County Court Rules.*]—In this Part of these Rules, words have the same meaning as in the County Court Rules, 1936,[9] and an Order and Rule referred to by number mean the Order and Rule so numbered in those Rules.

Part V.
Other Courts.

39. *Courts of summary jurisdiction.*]—(1) In proceedings in a court of summary jurisdiction where there is a claim to a judgment to which section 1 or section 2 of the Act applies—

(*a*) an application for leave to proceed may be made at the time when judgment is given in the presence of the defendant or his solicitor or counsel or if, at the request of the complainant, a notice adapted from Form 3 has been served on the defendant with the summons ;

(*b*) if the complainant so applies, the court may, at the time when judgment is given, make an order giving leave to proceed or such other order under the Act as the court thinks proper ;

(*c*) if judgment has been given against the defendant, an application for leave to proceed may be made at the hearing of a summons in a form adapted from Form 4.

(2) The Summary Jurisdiction Rules for the time being in force shall apply to such proceedings subject to the foregoing provisions of this Rule.

40. *Courts for recovery of rates.*]—(1) In proceedings for the recovery of rates, the application for leave to levy a distress may be made at the hearing of the summons for non-payment of rates if a notice to the effect of Form 9 has been served on the defendant in the manner in which such a summons may be served not less than 4 clear days before the hearing of the summons.

(2) If a warrant of distress for rates has, whether before or after the commencement of the Act, been issued without leave having been given under the Act, and the distress has not been levied, an application for leave to levy the distress may be made to the court at the hearing of a summons in a form adapted from Form 4 and served on the defendant in the manner in which a summons for non-payment of rates may be served.

(3) If the notice or summons is not served on the defendant personally, the rating authority shall, before the court decides whether to give leave to distrain, call the attention of the court to the date and manner of service and to any circumstances within the knowledge of the authority bearing on the question whether and when the notice or summons came to the knowledge of the defendant.

(4) No warrant of distress shall issue unless the court is satisfied that a notice or summons has been served in accordance with paragraph (1) or paragraph (2) of this Rule, as the case may be, and that the defendant has had a sufficient opportunity of showing cause why the discretion of the court should be exercised in his favour.

(5) In a case to which Rule 46 applies, no distress shall be levied after the date of the protection order without the leave of the adjustment court, and the provisions of that Rule shall, as from the date of the protection order, have effect in lieu of the foregoing provisions of this Rule.

41. *Other courts.*]—Rules 9 to 18 and 22 and the forms prescribed therein shall apply with such modifications as may be necessary to courts other than the High Court, the County Courts and Courts of Summary Jurisdiction.

Part VI.
All Courts—General.

42. *Rules of court to apply subject to these Rules.*]—In any proceedings under the Act or the Regulations in any court the procedure shall be regulated by the rules of procedure appropriate for that court subject to the provisions of these Rules.

43. *Power to hear in private.*]—The court may at any stage of the proceedings on an application under the Act or the Regulations order that the case shall thenceforward be heard in private.

44. *Use of Forms.*]—The Forms in the Appendix to these Rules shall be used wherever applicable with such variations as the circumstances may require :

Provided that no Form shall be varied in such a way as to impose on any party or other person an obligation to which he is not subject by virtue of the Act or these Rules or otherwise by law.

45. *Power to vary orders.*]—(1) The court may, on application or of its own motion, suspend, discharge or vary any order made under the Act or the Regulations or these Rules, if, having regard to the circumstances, the court thinks it just to do so.

(2) The power conferred by the last foregoing paragraph in relation to a judgment shall be in addition to, and not in derogation of, any power which the court may have independently of the Act to suspend, or stay execution on, the judgment.

(3) Where the court has made an order under the Act or these Rules giving leave to proceed to the enforcement of a judgment, and subsequently makes an order independently of the Act suspending, or staying execution on, the judgment, the court may make any consequential alterations in the order giving leave to proceed which may be necessary to avoid a conflict between the two orders.

46. *Adjustment court.*]—When a protection order is in force in proceedings pending in a court having jurisdiction under the Liabilities (War-Time Adjustment) Act, 1941 (in this Rule called the adjustment court), and the appropriate court for the purposes of the Act is, in accordance with the proviso to Rule 1, the adjustment court, any application under the Act or these Rules may be made in the course of the proceedings in, and in accordance with the practice of, the adjustment court, and on notice to the Liabilities Adjustment Officer concerned, and in such a case Parts III, IV and V of these Rules shall have effect subject to this Rule as from the date of the protection order.

47. *Interpretation.*]—(1) In these Rules, unless the context otherwise requires—

" the Act " means the Courts (Emergency Powers) Act, 1943 ;

" the Regulations " means the Defence (Evacuated Areas) Regulations, 1940 ;

a section referred to by number means the section so numbered in the Act ;

a rule referred to by number means the rule so numbered in these Rules ;

a form referred to by number means the form so numbered in Appendix I to these Rules ;

" judgment " includes " order," and " judgment given " includes " order made " ;

" leave to proceed " means leave to proceed to execution or otherwise to the enforcement of the judgment ;

" war-time contract " means a contract, lease or tenancy made or entered into after the first day of September, 1939 ;

(9) S.R. & O. 1936 (No. 626) I, p. 282.

"action on a war-time contract" means an action for any such relief as is mentioned in paragraph (*a*) or (*b*) or (*c*) of subsection (1) of section 2;

Inclusive meaning of expressions used in rules, orders, notices, etc.]—(2) Unless the context otherwise requires, the meaning of the following expressions, when used in these Rules and in documents authorised by these Rules in relation to a judgment in an action on a war-time contract, shall include the meanings indicated in the following table:—

Expression	*Meaning included*
"Protection afforded by the Act."	A direction that section 1 shall apply to the judgment.
"Showing cause why the discretion of the court should be exercised in favour" of the person liable on the judgment.	Showing cause why a direction should be given that section 1 shall apply to the judgment and why leave to proceed should be refused or, if given, should be given subject to restrictions and conditions.
Refuse leave to proceed. Give leave to proceed subject to restrictions and conditions.	Direct that section 1 shall apply to the judgment.
Order refusing leave to proceed or giving leave to proceed subject to restrictions and conditions.	Order directing that section 1 shall apply to the judgment.
Order giving leave to proceed (without restrictions or conditions).	Order that section 1 shall not apply to the judgment.
Application / Apply for leave to proceed.	Application / Apply for a decision that section 1 shall not apply to the judgment.

(3) The Interpretation Act, 1889, shall apply for the interpretation of these Rules as if they were an Act of Parliament.

48. *Pending proceedings.*]—These Rules shall apply, so far as practicable, to any proceedings pending in any court on the day on which these Rules come into operation, and save as aforesaid the Rules made under the Courts (Emergency Powers) Act, 1939, and in force immediately before that day shall continue to apply to such proceedings:—

Provided that—

(*a*) where a judgment creditor is entitled at the commencement of these Rules to proceed immediately to the enforcement of the judgment in an action on a war-time contract, nothing in these Rules shall prevent him from so enforcing it; and

(*b*) where a judgment creditor issues a judgment summons before the commencement of these Rules, nothing in these Rules shall prevent the judge from making any new order or order of commitment which he would have been entitled to make if these Rules had not been made.

49. *Citation and commencement.*]—These Rules may be cited as the Courts (Emergency Powers) Rules, 1943, and shall come into operation on the 1st day of October, 1943, and except as provided in the last foregoing Rules the Rules mentioned in Appendix II to these Rules, shall cease to have effect.

Dated the 30th day of July, 1943. *Simon*, C.

[*Owing to pressure on our space we are omitting Appendix I, which sets out the necessary forms for use under these Rules.*]

APPENDIX II

RULES REVOKED.

S.R. & O. Reference.	Title.
1940 (No. 408) I, p. 413 ..	The Courts (Emergency Powers) (Consolidation) Rules, 1940.
1940 (No. 531) I, p. 224 ..	The County Court (Emergency Powers) (Consolidation) Rules, 1940.
1940 (No. 1306) I, p. 222 ..	The Courts (Emergency Powers) (No. 2) Rules, 1940.
1940 (No. 1421) I, p. 241 ..	The Courts (Emergency Powers) (Evacuated Areas) Rules, 1940.
1940 (No. 1422) I, p. 238 ..	The County Court (Emergency Powers) (No. 2) Rules, 1940.
1941 (No. 803) I, p. 133 ..	The Courts (Emergency Powers) (No. 1) Rules, 1941.
1941 (No. 804) I, p. 140 ..	The County Court (Emergency Powers) (No. 1) Rules, 1941.
1942 (No. 1515) I, p. 102 ..	The Courts (Emergency Powers) (No. 1) Rules, 1942.
1942 (No. 2163) I, p. 104 ..	The Courts (Emergency Powers) (No. 2) Rules, 1942.
1942 (No. 2164) I, p. 106 ..	The County Court (Emergency Powers) (No. 1) Rules, 1942.

(*Concluded.*)

WAR DAMAGE COMMISSION REGIONAL MANAGERS.

The War Damage Commission notifies the following transfers and appointment of Regional Managers:—

Mr. R. G. Townend, from the N.E. London Region to the North-Eastern Region, Leeds; Mr. V. P. O'Connor, from Head Office to the N.E. London Region; Mr. A. R. Farlam, from the S.E. London Region to the S.W. London Region; Mr. H. E. Gibbs, from the Midland Region, Birmingham, to the S.E. London Region; Mr. A. W. Arundale, from Head Office to the Midland Region, Birmingham.

Notes of Cases.

HOUSE OF LORDS.

Allchin (Inspector of Taxes) *v.* Coulthard.

Viscount Simon, L.C., Lord Russell of Killowen, Lord Macmillan, Lord Wright and Lord Romer. 5th August, 1943.

Revenue—Income tax—Local authority—Interest on loans—Payment out of general rate fund—Retention of tax—"Profits or gains" brought into charge—Income Tax Act, 1918 (8 & 9 *Geo.* 5, *c.* 40), *All Schedules Rules, rr.* 19, 21.

Appeal of the Crown from the unanimous decision of the Court of Appeal reversing the decision of Lawrence, J., upon a case stated by the Special Commissioners.

The matter arose upon an assessment to income tax for the year 1935–1936 made upon the respondent as treasurer of the County Borough of South Shields under r. 6 of the Miscellaneous Rules applicable to Sched. D of the Income Tax Act, 1918. In substance, the question at issue was whether certain annual interest paid by the corporation during the year 1935–36 was paid, or should be deemed to be paid, out of profits or gains brought into charge to income tax, with the result that the corporation was not required to hand over to the Crown the income tax which it had deducted when paying such interest. In 1935–36 the corporation paid interest amounting to £132,396 on borrowed money and, on making such payments, deducted income tax at the standard rate. For the same year the profits or gains of the corporation were assessed to tax at £91,504. The corporation agreed that it was liable to account to the Crown for tax deducted in respect of so much of the £132,396 as exceeded £91,504, viz., £40,892, but claimed to retain the rest. The Crown, however, contended that a further sum of tax deducted from interest must be handed over, viz., tax on £15,217, arrived at as follows: The profits of the corporation's electricity undertaking for 1935–36 amounted to £31,859, while the interest paid for that year on moneys borrowed for that purpose amounted to £19,231. The difference between these two figures was £12,628. Similarly, the profits from the corporation's transport undertaking was £7,778, while the interest paid on moneys borrowed for that purpose was £5,189, the difference being £2,589. This £2,589, when added to the £12,628, made up the £15,217, the tax on which was in dispute. The Crown contended that the balance of profit on these two undertakings was not to be treated as a contribution to meet the interest on loans not raised for the particular undertaking or as having been available for such a purpose, and that such interest could not lawfully be paid out of the profits of the undertakings, inasmuch as the profits of these particular undertakings were dedicated by statute to specific purposes other than the payment of such interest.

VISCOUNT SIMON, L.C., said that the scheme contained in the Income Tax Act, 1918, All Schedules Rules, rr. 19 and 21, seemed reasonably clear. The receiver of the annual payment was chargeable in respect of annual profits or gains arising from "all interest of money, annuities, and other annual profits or gains," under Sched. D, 1 (*b*), but under rr. 19 and 21, the tax was collected at source before payment to him. If the payment was made out of the profits and gains of the payer, he was entitled to reduce his payment by the amount of the tax, but the Legislature was not concerned to insist that he should do so, as the Crown would get the tax whether he did so or not. If and so far as the payment was not made out of profits and gains, the Legislature insisted that the payer must deduct tax and account for it, for otherwise the Crown might not receive it. What was the proper meaning to put on the phrase "payable wholly out of profits and gains brought into charge" in r. 19 and the phrase "not payable, or not wholly payable, out of profits or gains brought into charge," in r. 21? "The profits or gains brought into charge" must, in his view, mean the actual profits of the year calculated with such deductions, additions or allowances as the income tax law prescribed. Tax was set off against tax. The tax deducted on paying interest against the tax charged for the same year on an assessed figure of profits or gains from which the interest payment had not been deducted. This construction was in accordance with the result—though not with the reasoning—in *Attorney-General* v. *Metropolitan Water Board* [1928] 1 K.B. 833, and the decision in that case should be approved. The remaining question was whether it was legal, in view of the South Shields Corporation Act, 1935, to use profits from the electricity and transport undertakings in order to pay interest on moneys borrowed for general purposes. Sections 113, 114 and 116 of that Act made it legitimate for the corporation to have done what they claimed to have done. Section 116 abolished all existing statutory regulations and restrictions as to the application of the surplus revenues of the undertakings. The result was that there was nothing illegal in the corporation paying this interest out of the mixed fund which contained its profits and gains. The corporation rightly claimed to be treated as paying the interest out of profits and gains brought into charge. The appeal failed.

The other noble and learned lords agreed in dismissing the appeal.

COUNSEL: *The Solicitor-General* (Sir Donald Maxwell Fyfe, K.C.), *David* and *R. P. Hills*; *Millard Tucker*, K.C., *Maurice Fitzgerald*, K.C., and *Terence Donovan*.

SOLICITORS: *Solicitor of Inland Revenue*; *Speechley, Mumford & Craig.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

COURT OF APPEAL.

Lyon and Another *v.* Daily Telegraph, Ltd.

Scott, MacKinnon and Goddard, L.JJ. 29th July, 1943.

Defamation—Libel—Newspaper—Anonymous letter—Omission to trace identity of writer—No evidence of malice.

Appeal from a judgment of Hilbery, J., in an action for damages for libel in which he awarded the plaintiffs £5 damages and costs. The

defendants pleaded fair comment. The alleged libel was contained in a letter published in *The Daily Telegraph* of 5th March, 1942, under the heading "Flabby Amusement," signed "A. Winslow, The Vicarage, Wallington Road, Winchester," and referring to broadcast "on Sunday evening at church time" as "costly," "an insult to British intelligence," "vulgar exchange of abuse," "vulgar wisecracks" and a sordid show. The plaintiffs had broadcast a comic entertainment on Sunday evening at 6.30 for several consecutive weeks previously, and the references in the letter to particular jokes about "a louse" and "laughing my blooming 'ead off" left no doubt that the intended reference was to the plaintiffs and another artist who helped them in their broadcast. Hilbery, J., held that the letter was capable of being defamatory, and as there might have been juries who would have found it to be defamatory, he held, with considerable doubt, that it was defamatory of the plaintiffs as artists, though not in their private lives. His lordship further held that the plea of fair comment could not succeed because (1) the statement that the broadcast was costly was untrue and was added to give a barb to the comment that the show was a waste of money, and (2) the letter purported to come from an address which was non-existent, and there was no clergyman of the name of the purported writer. The false name and false address were intended to suggest that the writer was a responsible person and a minister of religion, and there was therefore evidence that the writer was not wholly prompted by motives of conscience. His lordship awarded £5 and no more, as the plaintiffs had themselves said that they did not bring the action for the sake of damages.

SCOTT, L.J., said that there was nothing defamatory of the plaintiff in saying that the broadcast was costly, nor was there any evidence about cost. There was another fact which raised a new point of law about fair comment. The newspaper proprietors were ignorant that the letter was not in fact a signed letter, and not merely anonymous. There was no law making it the duty of every newspaper to verify the signature and address of the writer before publishing it, although it might be desirable on public grounds for the newspaper to do so as far as practicable. Assuming that comment inspired by oblique notice ceased to be fair, it did not necessarily follow that if the writer was made co-defendant with the newspaper, the newspaper would also lose its defence of fair comment. Even if the writer and the newspaper were joint tort-feasors it did not necessarily follow that the newspaper would lose its own defence if the writer was not made defendant. The question of law was implicit in the well-established rule that the publishers of a newspaper, when defendants in an action for libel, cannot, on the issue of fair comment, be required to disclose the source of their information. Another contention for the respondents was that the newspaper had lost its right to plead fair comment because it had been guilty of negligence in publishing the letter without inquiring into the identity of the writer. Negligence, however, did not destroy the fairness of an apparently fair comment. The appeal would be allowed.

MACKINNON, L.J., said that the point made as to the non-existence of the supposed writer or the genuineness of his address was quite irrelevant.

GODDARD, L.J., said that anonymity was no evidence of malice; dramatic and musical criticism in newspapers was usually contained in an unsigned article. There was no evidence of malice here, and so it was unnecessary to consider whether the newspaper would have been able to rely on the defence of fair comment if it had been found that the writer of the letter which they published was not honest but was inspired by malice in writing what he did.

Appeal allowed with costs.

COUNSEL: *Serjeant A. M. Sullivan*, K.C., and *Valentine Holmes*; *G. O. Slade*, K.C., and *Colin P. Duncan*.

SOLICITORS: *Alfred Cox & Son*; *Harold Kenwright & Cox*.

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

CHANCERY DIVISION.

In re Armstrong; Graham *v.* Armstrong.

Cohen, J. 29th July, 1943.

Will—Construction—Option to purchase after death of life tenant—Sale by life tenant—Effect on option—Settled Land Act, 1925 (15 *Geo.* 5, *c.* 18), *s.* 75 (5).

Adjourned summons.

The testator, who died on the 24th June, 1900, by his will devised his farm at S to his wife E during her life and after her death he directed that it should fall into his residuary estate, which was held upon trust for sale. By cl. 12 the testator further provided that, if his son H should within twelve months of the death of E by notice in writing signify his desire to purchase the farm at S at the sum of £5,000, then his trustees should sell the same to him at that price. E died on the 31st August, 1942, and three days after her death H gave notice in writing signifying his desire to purchase the farm. E during her life, in exercise of her statutory powers, had sold 60 acres of the farm, out of a total of 200 acres, and had contracted to sell a further 47 acres for an aggregate price exceeding £19,000. This high price was due to the fact that the farm had been found to contain valuable deposits of limestone. The surviving trustee of the will took out this summons asking whether H was entitled to the £19,000, representing the proceeds of sale of part of the farm, or whether these moneys were held upon the trusts applicable to the residuary estate.

COHEN, J., said it was contended on behalf of the residuary legatees that the question was concluded in their favour by *In re Flint* [1927] 1 Ch. 570. That case was distinguishable on two grounds: First, the option there was to purchase at a price to be fixed by a valuer; secondly, the question what right, if any, the grantee of the option might have in the proceeds of sale was not considered. As a matter of construction, the testator intended that, subject to the life interest of his widow, any benefit which might accrue from the farm above the sum of £5,000 should enure for the benefit of H and, having exercised the option, he was entitled to the proceeds of sale (*In re Cant's Estate*, 4 de G. & J. 503; *In re Kerry's Estate* (1889), W.N. 3). The argument of the persons entitled to residue was also inconsistent with the provisions of the Settled Land Act, 1925. The proceeds of sale were capital moneys within s. 75 (5). That subsection provided: "Capital money arising under this Act . . . shall be held for and go to the same persons successively, in the same manner and for and on the same estates, interest, and trusts, as the land wherefrom the money arises would, if not disposed of, have been held and have gone under the settlement." The right of H to purchase the land was an interest in land (*London & South Western Railway Company* v. *Gomm*, 20 Ch. D. 562). That interest was an interest within s. 75 (5), and the trustees were bound to hold the capital moneys on the same trusts as the land wherefrom the moneys arose. He would declare that H was entitled to the unsold land and the capital moneys representing the land which had been sold.

COUNSEL: *C. V. Rawlence*; *A. de W. Mulligan*; *A. J. Belsham*.

SOLICITORS: *Cunliffe & Airy*; *F. B. Brook*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

War Legislation.

STATUTORY RULES AND ORDERS, 1943.

E.P. 1138. **Coal Distribution Order,** Aug. 5.
E.P. 1100. **Consumer Rationing** (Consolidation) Order, Aug. 10.
E.P. 1161–1165 (as one document). Consumer Rationing (Consolidation) Order, 1943. General Licences and Directions. Aug. 14.
E.P. 1099. Consumer Rationing (No. 21) Order, Aug. 10.
E.P. 1188. **Control of the Cotton Industry** (No. 44) Order, Aug. 14.
E.P. 1173. Control of Employment (Notice of Termination of Employment) Order, Aug. 10.
E.P. 1194. Control of Motor Fuel (No. 2) Order, Aug. 10.
E.P. 1183. Control of War Emergency Paint Order, Aug. 12.
No. 1116. **Customs.** Export of Goods (Control) (No. 7) Order, Aug. 9.
E.P. 1139. **Legal Proceedings** (Local Fuel Overseers) (No. 2) Order, Aug. 5.
No. 1156. **National Health Insurance** (Deposit Contributors Insurance Section) Amendment Regulations, July 19.
E.P. 1179. **Navigation Order,** No. 26, Aug. 9.
No. 1193. **Pension.** Supplementary Pensions (Determination of Need and Assessment of Needs) (Amendment) Regulations, Aug. 13.
E.P. 1040. **Registration of British Protected Persons Order,** July 17.
No. 1186. **Unemployment Assistance** (Determination of Need and Assessment of Needs) (Amendment) Regulations, Aug. 11.
E.P. 1147. **War Charities** (Definition) Order in Council, Aug. 10.
No. 1158. War Risks (Commodity Insurance) (No. 3) Order, Aug. 9.

Notes and News.

Honours and Appointments.

The King, on the recommendation of the Lord Chancellor, has approved the appointments of Sir THOMAS FOWELL BUXTON to be Chairman, and Mr. MAURICE PEMBROKE FITZGERALD to be Deputy Chairman, of the County of Essex Quarter Sessions. The appointments take effect from 1st April last.

The India Office announces that the King has appointed Sir FREDERICK LOUIS GRILLE to be Chief Justice of the High Court of Nagpur on the resignation of Sir Gilbert Stone. The King has also appointed The Hon. WASUDEO RAMCHANDRA PURANIK to be a judge of the High Court in Nagpur to fill the vacancy caused by the appointment of Sir Frederick Grille to be Chief Justice. Sir Frederick was called by Gray's Inn in 1925.

Mr. CHARLES LAMOND HENDERSON, K.C., has been appointed Recorder of Newark in succession to Mr. Arthur S. Ward, K.C., who has been appointed Recorder of Coventry. Mr. Henderson was called by the Middle Temple in 1920 and took silk this year.

Wills and Bequests.

Mr. William Anderson Armstrong, J.P., LL.B., solicitor, of South Shields, left £62,251, with net personalty £51,729.

Sir Alfred Baker, solicitor, chairman of the L.C.C., left £29,651, with net personalty £27,293.

Mr. Jonathan Barber, solicitor, of Sheffield, left £4,549, with net personalty £2,614.

Sir Edgar Stanford London, C.B.E., barrister-at-law, left £118,818, with net personalty £118,686. He left £500 to the Corporation of the City of London for a stained glass window in Guildhall to commemorate its rebuilding.

Mr. Kenneth McAlpin, solicitor, of Leicester, left £6,113, with net personalty £3,699.

Mr. George Egerton Pollitt, J.P., solicitor, of Chapel-en-le-Frith, Derbyshire, left £47,901, with net personalty £43,736.

Mr. James Perry Ringwood, solicitor, of Dublin, left personal estate in England and Eire valued at £20,037.

Mr. George Stuart Sherrington, solicitor, of Hornsey, left £7,152. He left £3,200 and a share in the residue to Mr. E. A. Draxler, for thirty years his managing clerk.